IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1444 of 2003

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VALLABHBHAI LAXMANBHAI ROY - Petitioner(s)

Versus

MONA KHANDHAR & 6 - Respondent(s)

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Appearance :

MR BM MANGUKIYA for Petitioner
MR HS MUNSHAW for Respondent No(s).: 1.
RULE SERVED BY DS for Respondent No(s).: 2, 5 & 6.
MR MR MENGDEY, AGP for Respondent No(s).: 3 & 4.
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CORAM :HON'BLE MR JUSTICE AKIL KURESHI

Date : 23/06/2005

ORAL JUDGMENT

In the present petition, the petitioner who was at the relevant time the President of Gariadhar Taluka Panchayat has challenged his removal from the said post

by the order dated 19th August 2002 passed by the District Development Officer, respondent No.1 herein.

2. To appreciate the controversy involved and the submissions made by both the sides, it will be necessary to record in brief, a few facts leading to the present petition.

3. The petitioner, as noted above, was holding the position of President of Gariadhar Taluka Panchayat to which position he was elected in the year 2002. It is the case of the petitioner that he belongs to a political party which is in opposition in the State of Gujarat and the position enjoyed by the petitioner is, therefore, not liked by some of the members of the ruling party and have, therefore, all throughout his tenure, tried to create hindrance in the way of the petitioner and have tried to remove the petitioner from his position as President of Gariadhar Taluka Panchayat by fair means or foul. The petitioner has stated in the petition several factors to establish his theory of malafides on the part of some of the respondents and these aspects of the matter have been highlighted at considerable length by the learned advocate for the petitioner. I would be detailing these factors and dealing with the contentions thereon at a later stage in this order.

4.So far as the present litigation is concerned, a show cause notice dated 15th June 2002 came to be issued against the petitioner by the District Development Officer, Bhavnagar, leveling several allegations against him which included those of financial irregularities and of procedural illegalities and irregularities committed by the petitioner.

4.1 Though there are several limbs of these allegations, primarily the allegations pertained to payment of amount of Rs.35,844/- by two separate vouchers bearing Nos.3059 and 3060 both dated 15.1.2002. As seen from the show cause notice, the case against the petitioner is that there was some old dilapidated godown situated in the compound of Gariadhar Taluka Panchayat Office. For dismantling and demolishing this godown, the aforesaid amount of Rs.35,844/- was shown as an expenditure towards labour and other charges. It is the case of the administration that the godowns in question were already demolished earlier between 3rd May 2000 and 31st May 2000 for which labour charges of Rs.11,508.10 was already paid. It is, therefore, the case against the petitioner that the payment made under vouchers Nos.3059 and 3060 was completely unauthorized and that no such work in fact was undertaken. To establish

this prime charge, several further allegations were made against the petitioner in the said show cause notice which included allegations of irregularities in passing the bills and in making payments under the said vouchers. The fact, however, remains that the central controversy against the petitioner was that he was alleged to have authorised and permitted payment of Rs.35,844/- under voucher Nos.3059 and 3060 for demolition work which was never undertaken.

4.2 The petitioner denied these charges by his representation made in July 2002. Not satisfied with the explanation of the petitioner, an inquiry was conducted against him to inquire into the said charges and eventually, the District Development Officer, respondent No.1 herein, by her impugned order dated 19.8.2002 was pleased to hold that the charges against the petitioner are proved and eventually passed the order of removing the petitioner from his post of President of Gariadhar Taluka Panchayat in exercise of powers under section 7(1) of the Gujarat Panchayats Act, 1993. She also provided that the petitioner will be disqualified to continue as a member for a period of five years from the date of implementation of the said order. The petitioner preferred appeal against

the said order dated 19th August, 2002 to the Development Commissioner. The Development Commissioner, however, by his order dated 4th February 2003 was pleased to reject the appeal of the petitioner. The order passed by the District Development Officer on 19.8.2002 was thus confirmed. The petitioner has, therefore, filed the present petition challenging his removal on several grounds.

5. Learned advocate for the petitioner sought to assail the order passed by the District Development Officer as upheld by the Development Commissioner on following grounds:-

(a) It was urged by learned advocate Shri Mungukiya that the order of removal passed by the District Development Officer on 19.8.2002 suffers from violation of principles of natural justice. It is his case that important material documents which have been relied on by the District Development Officer were not supplied to the petitioner. He, therefore, contended that collecting the material behind the back of the petitioner and placing reliance upon the same by respondent No.1 amounts to gross violation of principles of natural justice. He, therefore, submitted that the impugned order is required to be set aside.

(b) The order passed by the District Development Officer was sought to be challenged on the ground of malafides. It is contended on behalf of the petitioner that respondent No.1 District Development Officer passed the order under extreme pressure from political personalities belonging to the ruling party in the State. It is the case of the petitioner that several attempts were made by respondent Nos.2, 5 & 6 who hold higher public offices and who had considerable political influence to remove the petitioner. It is, therefore, the case of the petitioner that the order passed by respondent No.1 is tainted by factual malafides.

(c) It is contended on behalf of the petitioner that the impugned orders travel beyond the scope of the show cause notice and charges not levelled against the petitioner in the show cause notice have been held to have been proved.

(d) It is next contended that there was no material on record to permit respondent No.1 to conclude that the charges are proved. In this regard, it is contended that it was in fact the earlier Oversear one Shri M.L.Bhorania who had concocted the entire charge against the petitioner since said Shri

Bhorania himself was facing serious charges of financial irregularities for the earlier transaction of payment of an amount of Rs.11,508.10 ps for alleged demolition of the godowns carried out for the period between 3rd May 2000 and 31st May, 2000. On this basis and relying on certain documents on record, it was canvassed by the learned advocate for the petitioner that respondent No.1 could not have held the charges as proved and these conclusions are perverse since they are based on no evidence. In this regard, it is also contended that in any view of the matter, the case against the petitioner is that he did not take sufficient care to ensure that unauthorized payment is not made. It is contended that the petitioner was holding the position of President of the Taluka Panchayat and if unauthorized payment is made by some other officer of the Panchayat, the petitioner cannot be made a scape-goat by jeopardizing his political career.

6. In support of the contentions, learned advocate Shri Mangukiya has relied on several decisions of this High Court and the Hon'ble Supreme Court.

6.1 Reliance was placed in the case of Lal Babu Hussein v. Electoral Registration Officer, (1995) 3 SCC 100 to contend that principles of natural justice

require that adverse material must be made known to the person against whom the same is proposed to be used for the opportunity of being heard to be meaningful and purposive.

6.2 Reliance was placed in the case Tarlochan Dev Sharma v. State of Punjab (2001) 6 SCC 260 to submit that the principles of natural justice requires due application of mind. The said authority was relied upon to submit that the grounds in show cause notice must be the same which are relied upon by the competent authority to remove an incumbent from his position. This authority was also placed reliance on to support the allegations of malafides.

6.3 Reliance was placed on the observations of the Hon'ble Supreme Court in the said decision wherein the Hon'ble Supreme Court observed that in the Indian system of democratic governance, senior officers occupying key positions, such as Secretaries are not supposed to mortgage their own discretion, volition and decision making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law.

6.4 Reliance was placed in the case of Express Newspapers Pvt. Ltd v. Union of India, AIR 1986 SC

872 to submit that fraud on power voids the order if it is not exercised bonafide for the end design. Reliance was placed on the observations of Hon'ble Supreme Court to the effect that the power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an alien purpose other than the one for which the power is conferred is mala fide use of that power.

6.5 Reliance was placed on the decision of the Hon'ble Supreme Court in the case of DDA v. UEE Electricals Engg. (P) Ltd., (2004) 1 SCC 213 wherein it was observed that it is not that mala fides in the sense of improper motive, should be established only by direct evidence.

6.6 Placing reliance on the decision in the case of Medley Minerals India Ltd v. State of Orissa, (2004) 12 SCC 390, it was contended that when the petitioner has led some foundation for the allegations of malafides, the impugned order should be struck down.

6.7. Reliance was placed in the case of State of Orissa v. Binapani Dei AIR 1967 SC 1269 to contend that it is open for the High Court in a given case to examine the disputed questions of fact.

6.8. Reliance was also placed in the case of Seimens Engg. & Mfg. Co. v. Union of India, AIR 1976 SC 1785 to contend that quasi judicial order must be supported by reasons which is the basic principles of natural justice. For the same purpose, reliance was placed on the decision of the Hon'ble Supreme Court in the case of Institute of Chartered Accountants of India v. L.K.Ratna, AIR 1987 SC 71.

6.9 Reliance was placed on the decision reported in AIR 1978 SC 851 (Mohinder Singh v. Chief Election Commissioner) to contend that validity of an order passed by the statutory authority has to be examined by reasons so mentioned in the order and the reasons cannot be supplemented in the shape of affidavit or otherwise.

6.10 Reliance was placed in the case of Vinaykumar v. Addl. Dev. Commissioner, 1984(2) GLR 1046. On the basis of the said decision, it was contended that mere irregularity in exercise of powers does not amount to abuse of power and removal of elected member of a public body in such a case would not be justified.

7. Appearing for respondent No.1, learned advocate Shri Munshaw supported the decision of the authorities. It was contended that there was sufficient evidence on

record against the petitioner to establish that he had prepared false bills and was a party to withdrawal of more than Rs.35,000/- by way of false and fabricated accounts. He submitted that the godowns which were supposed to have been demolished for which the said expenditure was incurred in the year 2002 were already demolished in May 2000 and that therefore the entire attempt was to defraud the public exchequer. He contended that there were large number of irregularities and illegalities committed in passing of these bills which would further show that the petitioner had misused his powers. Learned advocate Shri Munshaw relied on the affidavit in reply filed by respondent NO.1 in which the allegations of malafides have been specifically denied. In the affidavit in reply filed in March 2003, respondent No.1 has stated that she denies the averments and allegations made against her to the effect that she is acting with prejudice and malafide intention against the petitioner. She also denied that she was taking decision under political pressure from different quarters. She stated that she is taking appropriate decisions in accordance with the provisions of law and after following due procedure required under the provisions of the Gujarat Panchayats Act.

7.1 Learned counsel Shri Munshaw submitted that the inquiry conducted against the petitioner was in consonance with the principles of natural justice. All relevant documents were supplied to the petitioner. He was given sufficient opportunity to represent his case. Only upon conclusion of the inquiry that respondent No.1 on the available material on record found that the charges against the petitioner were proved and that therefore the removal order came to be passed.

8. Learned AGP Mr.Mengdey appearing for respondent Nos.3 & 4 supported the orders passed by the administration. He contended that the Development Commissioner has considered the appeal on merits and has taken into account all aspects of the matter raised by the petitioner. No infirmity, therefore, could be found in the disposal of the appeal. He, therefore, prays that the petition should be dismissed.

9. Before dealing with the contentions with respect to the question of infringement of principles of natural justice and allegations of malafides, it would be appropriate to deal with and decide other contentions outlined on behalf of the petitioner in para 6 above. Since number of contentions raised in this regard

overlap, I find it convenient to deal with these contentions simultaneously.

10. Learned advocate Shri Mungukiya has painstakingly taken me through the voluminous material on record. As noted earlier, it is his contention that final order that came to be passed by respondent No.1 transgresses the show cause notice and travels beyond the allegations made therein. It is his contention that there is no material on record to establish the charges against the petitioner and the findings arrived at by respondent No.1 are therefore perverse in that sense. The second limb of this argument advanced by the petitioner is that the petitioner was discharging his duties as President of the Taluka Panchayat and, in any case, even if there has been some irregularity committed in payment of money, the petitioner cannot be blamed for the same since there is no direct evidence to link the petitioner with such monetary transactions.

11. Having perused the show cause notice issued to the petitioner, I find that the show cause notice outlined the charges sufficiently wide. In fact, in the show cause notice, it was clearly stated that by withdrawing a total amount of Rs.35,844/- under two different vouchers bearing No.3059 and 3060 dated 15.1.2002, the

petitioner has misappropriated this amount. It was alleged that the said withdrawal was by fabrication of record. It is in terms alleged that the amount which is purported to have been paid by way of labour and other charges for demolition of old godowns could never have been paid since the said godowns were already demolished way back in May 2000. There are number of allegations made in the show cause notice levelling allegations of irregularities having been committed in passing of these bills by fabrication of record. Validity of these charges apart, it cannot be stated that the show cause notice did not put the petitioner to notice that allegations of financial irregularities are being inquired into against him. The charges contained in the show cause notice were specific and of serious nature. Comparing the contents of the show cause notice with the final order of removal passed by the District Development Officer, I do not find that the final order of removal travels beyond the charges levelled against the petitioner in the show cause notice. As noted earlier, the charges in the show cause were specific and serious. The petitioner was put to sufficient notice regarding the nature of allegations leveled against him and the nature of inquiry being conducted against him. I am, therefore, unable to agree

with the contention raised on behalf of the petitioner that certain portion of the final order of removal travels beyond the scope of the show cause notice and in that sense, the final order was passed by taking the petitioner by surprise.

12. With respect to the question of availability of the material on record to establish these charges also, I am unable to come to a conclusion that this is a case of no evidence at all. It is not possible to hold that the conclusions arrived at by the District Development Officer were perverse since there was no material on record to establish these charges. While examining the validity of a domestic inquiry, it is not possible for this Court to inquire into the correctness of the findings arrived at by the competent authority. The scope of inquiry before this Court is to find out whether the conclusions are based on no evidence and therefore perverse. The District Development Officer in her order dated 19.8.2002 has discussed at length several aspects of the matter including the aspect that the godowns which were supposed to have been demolished in the year 2002 for which said amount was withdrawn as labour and other charges were supposed to have been already demolished in May 2000. Voluminous evidence in

the form of contemporaneous evidence is sought to be relied upon by the District Development Officer to drive home the charges. Sufficiency of evidence is not to be examined by this Court in exercise of powers under Article 226 of the Constitution of India. The question is whether there was no evidence at all and in that sense whether the findings were perverse. However much the learned advocate for the petitioner tried to establish before me that there was no evidence at all to permit the District Development Officer to conclude that the charges against the petitioner are proved, I am unable to persuade myself to accept this contention. Whether there was reliable evidence on record or not and whether on the touchstone of preponderance of probabilities such evidence would lead to the establishment of guilt of the petitioner are in the realm of appreciation of evidence which can best be done by the competent authority and not this Court while entertaining a writ petition against an order passed by the competent authority. I would not like to discuss threadbare the evidence which convinced the disciplinary authority to conclude that the charges against the petitioner are proved. In view of my ultimate conclusion with respect to other two aspects of the matter, the question of violation of principles of

natural justice and the question of malafides alleged by the petitioner, at this stage, at least I would like to conclude by recording that it is not possible to find that the findings of the District Development Officer were perverse. In that view of the matter, it is not possible to exonerate the petitioner of all the charges at least in this proceeding. It is also not possible to accept the contention raised on behalf of the petitioner that at any rate, he was only discharging his duties as the President of the Taluka Panchayat and that even if there was some irregularity in passing of the bills and there was some misappropriation of Panchayat's funds, the petitioner cannot be blamed for the same. Such a contention would be super-technical and would be ignoring the ground realities. The charges against the petitioner were that in the Panchayat building there was some old godown which was already pulled down in May 2000 for which expenditure was already sanctioned and incurred and for this very godown, once again in the year 2002, expenditure of Rs.35,844 was incurred by creating fabricated documents and records. When the godowns are situated in the compound of the Panchayat building itself, it is quite impossible to accept the contention of the petitioner that he would have no knowledge about the activities going on and he would

not have any control about passing of the bills relating to the said activities. It is not even the case of the petitioner that he was, at no stage, involved in clearing the expenditure. In fact, resolution was passed by the Taluka Panchayat and the expenditure was authorized by the petitioner even before that in anticipation of passing of such a resolution. The petitioner, therefore, cannot divorce himself from the incidents which occurred under his very nose.

13. This brings me to the two important and vital aspects of the matter, viz. the allegations of violation of principles of natural justice and that of malafides in passing of the impugned order.

14. It was contended on behalf of the petitioner that the impugned order was based on material collected by respondent No.1 behind the back of the petitioner which was never disclosed to the petitioner till passing of the impugned order or even thereafter. In this regard, my attention was drawn to the discussion in the impugned order dated 19.8.2002 wherein respondent No.1 records as follows:-

> “As per the clarifications sought from the

> Executive Engineer dated 12.8.2002, it is stated that careful dismantling of brick construction in cement mortar of approximately 30 years old could retrieve 30-40% of bricks which comes to maximum of approximately 19,000 bricks. There is only one entry of bricks in dis reg. taking 14,000 bricks on the register dt. 25.6.2000. The so called 26,000 bricks retrieved from the second so-called demolition is neither entered in the records of the dis.reg. nor found physically with T.P. The physical verification report of the Executive Engineer dt. 19.6.2002 states that the maximum amount of broken and in tact bricks was 17.5 c.m.m i.e. approximately 9000 bricks, this is contrary to the submission of the respondent which stated that out of the so called second demolition 26,000 bricks were retrieved over and above 14,000 bricks of the earlier demolition, making a total of 40,000 bricks retrieved out of 30 yr. Old 49,000 brick construction in cement mortar which is more than 80% and corroborated neither from the records nor from the physical verification."

It is the specific case of the petitioner that the said clarification sought from the Executive Engineer on 12.8.2002 referred to herein-above was collected by respondent No.1 behind the back of the petitioner and the same was never supplied to the petitioner. It is the case of the petitioner that after the entire proceedings were over and when the petitioner

demonstrated before the Authority that sufficient number of bricks were retrieved from the demolition, to meet with this contention of the petitioner, respondent No.1 sought a report from the Executive Engineer and relied upon the same to establish that the petitioner's stand in this regard is incorrect.

14.1 There is no dispute about the fact that the clarification in the form of report was sought from the Executive Engineer on 12.8.2002 by respondent No.1. It is also not in dispute that copy of such clarification/report was never supplied to the petitioner. As a matter of fact, such a document has never been supplied to the petitioner or even to the Court till date. Thus, it is clearly established that respondent No.1 had relied on some important material which was not only collected behind the back of the petitioner but the same was relied upon without ever supplying a copy thereof to the petitioner. Not only before passing the final order, even thereafter, no attempt was made to supply a copy thereof to the petitioner. The clarification of the Executive Engineer has not only been relied upon by respondent No.1 but formed an important part of reasoning adopted by her to come to the conclusion that the theory of

the petitioner that in fact there was demolition in the year 2002 is incorrect and improbable. On the basis of the calculations supplied by the Executive Engineer, the conclusion of respondent No.1 was that the number of bricks which have been retrieved and available with the Panchayat would establish that there was no demolition in the year 2002. When such a strong reliance is placed on some material which has been collected by respondent No.1 behind the back of the petitioner, I am of the clear view that the same ought to have been supplied to the petitioner before relying upon the same to base any conclusion thereon. In this regard, I find that there has been a clear breach of principles of natural justice in holding the inquiry against the petitioner.

15. One more aspect of violation of principles of natural justice as pointed out by the learned advocate for the petitioner was that the impugned order of respondent No.1, District Development Officer, relies on certain statements made by the Taluka Development Officer and the Deputy Accountant. It was the defence of the petitioner that the bills were passed by the Taluka Development Officer who is the only drawing and disbursing officer and it was the Deputy Accountant

who actually paid the bills through the vouchers in question and that therefore the petitioner has no direct concern with such payments. In this regard, respondent no.1 in her impugned order records as under:

> “However the so-called bills were passed for payment by TDO, who is the Only Drawing & Disbursement Officer of the TP and Dy. Accountant paid the bill through V. No.3059 & 3060 dt.15/1/2002 for which TDO & Dy Accountant were found defaulting in the last para of the administrative report, whereby Show Cause Notices were issued to TDO and Dy. Accountant vide D.P. Panchayat-2-C.F. 15/02 W.S. 571/02 dt. 17/6/2002, in response to which the then TDO had submitted his explanation dt.12/7/2002, wherein he had stated that on 15/1/2002 the President TP Shri Vallabhbhai Roy has called him in his chamber after office hours and pressurised to pass the bills of the so-called second demolition of godown as well as quarter-repairing. Thereafter the bills were sent to him on his quarter through the Rozamdar and pressurised him excessively to pass the faulty and illegal bills against his will. And as he stayed alone there at that time and hew as suffering from many ailment, he passed the bill under threat. As he was transferred to Anand at the time of submitting his explanation, he had no threats from the president. Dy Accountant has admitted dt.27/4/2002 and 8/7/2002 that on 15/1/2002 after office hours he was called in the chamber by the President, TP Shri

> Vallabhbhai Roy and pressurised by him to debit the bills to the Earned Fund & Govt. Head. And thereafter at TDO's quarter he sent the bills through the Rozamdar and pressurised him to pass illegal bills against his will. The admission of Dy A/c and explanation of TDO are in the process of being verified as per the rules."

15.1 Once again, it is not in dispute that the so-called statements made by the Taluka Development Officer or the Dy. Accountant were never supplied to the petitioner before the final order was passed. As a matter of fact, except the isolated statement dated 27.4.2002 purported to have been given by the then Deputy Accounting Officer to the District Development Officer, a copy of which has been produced by respondent nO.1 along with her second affidavit in reply dated 18th March 2003, none of these documents have ever been supplied to the petitioner. The effect of such non-supply of these documents can be examined.

16. It was a specific case of the petitioner that he had neither passed the bill nor disbursed the amount in question. It is his case that the Taluka Development Officer and The Deputy Accountant between them passed the bill and disbursed the amount. To link the petitioner with the actual payments,

respondent No.1 collected and relied upon some important admissions made by these officers and based her conclusions thereon. Without ever supplying copies of these documents to the petitioner, without giving any opportunity to the petitioner to place rebuttal evidence and without giving any opportunity to the petitioner to cross examine the authors of these statements, it is difficult to appreciate how such statements could have been straightway collected, relied upon and made part of the order passed by respondent No.1 against the petitioner. I find that the course of action adopted by respondent No.1 is in gross violation of principles of natural justice. Other than these statements, I find that there is hardly any material relied upon by respondent No.1 in support of her conclusion that charge article No.1.2 against the petitioner has been proved. In that view of the matter, I find that there has been great injustice and prejudice caused to the petitioner when respondent No.1 passed the impugned order relying upon the above materials without disclosing the same to the petitioner and without supplying copies thereof to the petitioner at any stage of the inquiry proceedings.

17. It is by now well settled that when the order of

the Authority is being struck down on the ground of violation of principles of natural justice, the proceedings do not abate and it would normally be open for the administration to continue from the stage of removing the defect. In the case of Canara Bank v. Debasis Das, AIR 2003 SC 2041, the Hon'ble Supreme Court observed that whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and therefore, proceedings are left open. All that is done is to vacate the order assailed by virtue of inherent defect, but the proceedings are not terminated. However, in the present case, exact effect of the findings can be considered only on the basis of my conclusion with respect to the averments of the petitioner regarding malafides.

18. This brings me to the next contention raised on behalf of the petitioner, namely, that the impugned order is vitiated on the ground of factual malafides.

19. It is contended on behalf of the petitioner that he belongs to a party other than the party in power in the State and that number of leading persons in the party in power are interested in seeing the ouster of the petitioner. It was contended before me

that efforts were made to oust the petitioner by fair means or foul and having failed in a series of attempts, some of the persons holding high public office connived to ensure that the petitioner loses his position. Learned counsel Shri Mangukiya pointed out at length the chain of events which took place even before issuance of the show cause notice in question against the petitioner. He contended that in past, several frivolous charges were sought to be leveled against the petitioner. The petitioner was sought to be involved in a criminal case and the said proceedings have been stayed by the High Court. The counsel for the petitioner also pointed out that from the beginning it was the attempt of some of the members of the ruling party to destabilize the petitioner since he was otherwise doing good work and was a popular leader in his own right. Learned counsel for the petitioner pointed out that in fact some of the workers of the ruling party had gone on hunger strike to pressurise the administration into initiating action against the petitioner. He, therefore, submitted that actions were initiated against the petitioner under political pressure and the ultimate conclusions were also reached under considerable political influence. Learned advocate for the petitioner has also pointed out that events subsequent to the passing of the impugned order would also demonstrate that there was considerable pressure exerted by the political personalities inasmuch as the Development

Commissioner refused to stay the order passed by respondent No.1 even for a short period and the petitioner was compelled to approach this Court against such an action.

20. It is not necessary for me to go into the chain of events which took place prior to the issuance of show cause notice to the petitioner since I find that mere involvement in series of skirmishes with the administration would not ipso facto establish presence of guilty mind in general much less in particular against respondent No.1. However, there is further material on record which requires closer scrutiny.

20.1 The petitioner has produced at Annexures 'BB' 'CC', 'DD', 'EE', 'FF' and 'GG' copies of letters allegedly having been written by respondent Nos.2,5 and 6 herein. Respondent No.2 was a Member of Legislative Assembly at the relevant time of the area where the Taluka Panchayat is situated. Respondent No.5 was the then Minister of State with independent charge of Panchayats and respondent No.6 was the then Member of Parliament. All these three respondents belong to the ruling party. These respondents have been joined in their personal capacity by names. They have been duly served but have chosen not to be represented in the present proceedings. The contents of these letters need to be noted at this stage. On

14.2.2002, respondent No.2 wrote to the Taluka Development Officer a letter, a portion of which reads as follows:

> "This is to request that as talked with the District Development Officer, some people had gone on hunger strike against the President of the Gariadhar and as per our telephonic talk and as talked with the District Development Officer, I had got the matter compromised. At that time you and Shri Fisadia had assured me that steps will be taken against him and you told that some mistake on his part will be found out. I had, therefore, talked to Shri Gordhanbhai and DDO. Your report is therefore called for. Do sent a negative report so that the DDO can take action against him. You are in-charge of Gariadhar and therefore please do this much work for me."

On 6.6.2002,, respondent No.2 wrote letter to the District Development Officer, Bhavnagar in which it was stated as follows:

> "This is to request you that as per our talk, you have started proceedings against Gariadhar President, Vallabhbhai Roy. But do ensure that previous incident may not repeat. Kindly take personal care to ensure this. I am reminding again and again because elections are declared before time and if he is not suspended before election, it will cause prejudice to me. The resolution has been cancelled and only if you take proceedings against him and suspend him then there will be some benefit. I will manage to see that no interference is done by the Development Commissioner for which I have already talked to Gordhanbhai. As stated by you, I have conveyed

to the Government and your work will be done, but before that kindly do my work."

On 23rd July 2002, respondent No.2 once again wrote letter to the District Development Officer in which he stated that "I am requesting you to complete urgently the proceedings which are going against the Taluka Panchayat President, Gariadhar for his removal. I have spoken to Shri Gordhanbhai Zadaphia and Ranchodbhai Rabari. They also must have spoken to you on telephone. Since the Assembly has already been dissolved and the elections are imminent and the next date of hearing is 30th July, complete the proceedings without giving any further adjournment. By giving further time, I believe that he will be able to raise points of defence in his favour. Therefore, do not give any further time and I have thought of arrangement by which he will not get stay order from higher authority. Kindly do the needful in this regard. This is my expectation."

On 10th August 2002, respondent No.6 who was at the relevant time Member of Parliament wrote a letter to the District Development Officer, Bhavnagar, contents of which read as follows:-

"I have received letters from two MLAs of my party

complaining about the corruption committed by the Gariadhar Taluka Panchayat President Shri Vallabhbhai Roy. I am sending xerox copies of the letters along with this letter.

As per the telephonic talk with you and with your Minister, it is my recommendation that there should be a detailed inquiry against the Taluka Panchayat President Shri Roy and he should be suspended and disqualified.

It is my request that after collecting reliable evidence regarding the irregularities committed by Shri Roy, you should prepare a strong case against him and disqualify him."

On 17th August 2002, respondent No.5, the then Minister of State with independent charge of Panchayat Department wrote a letter to the District Development Officer, contents of which read as follows:-

"I am satisfied with your action of dismissing Shri Vallabhbhai Roy, Taluka Panchayat President, Gariadhar for committing corruption in the godown and quarters repairing case. However, according to the representations received by me, if minute inquiry is made, many more scandals are likely to come out. Kindly take appropriate steps and inform me."

On 28.8.2002, respondent No.6 wrote a letter to the Development Commissioner which reads as follows:-

> "President of Gariadhar Taluka Panchayat, District Bhavnagar, Shri Vallabhbhai Roy has been disqualified for having committed corruption in the administration of the Panchayat by the District Development Officer, Bhavnagar. I have come to know that Shri Roy is filing appeal in this connection.
>
> The appeal will be heard by you. Therefore, as per our telephonic conversation, I recommend you to take a strong action and ensure that his disqualification is confirmed.
>
> Kindly take urgent necessary steps in this regard."

It is the specific case of the petitioner that there was enormous pressure on respondent No.1 to decide the proceedings in a particular manner. Through above mentioned letters, it is sought to be canvassed that respondent No.1 was not given a free hand to decide the issues in accordance with the material available on record. It is the case of the petitioner that by bringing political pressure, respondent Nos.2, 5 & 6 interfered with the exercise of quasi-judicial powers by respondent No.1. It is contended that respondent No.1 could not have and has not decided the matter independently. It is, therefore, contended that the entire proceedings should be struck down as having been vitiated on the ground of factual malafides.

21. Before considering this contention, it would be necessary

to take into account some more facts on record.

22. As noted earlier, respondent Nos.2, 5 & 6 have been joined in the present proceedings in their personal capacity by name. These respondents though duly served by the notice of this Court have chosen not to represent. They have not participated in these proceedings. None of the above respondents have filed affidavit-in-reply denying the allegations of having written the letters in question. So far as these respondents are concerned, therefore, the averments of letters having been written have gone unopposed and in that sense the factum of these letters having been written is very much admitted. The matter does not really end here. So far as respondent No.1 is concerned, who is the recipient of most of these letters has filed an affidavit in reply. There is no specific denial that none of these letters were written to her or were not received by her. In fact, the averments of respondent No.1 in her affidavit-in-reply are rather curious. While dealing with the question of existence of these letters, in para 18 of her affidavit-in-reply filed in March 2003 which starts from page 376 of the present compilation, she states as follows:

> "18. With regard to the averments made in paragraphs 3.34 to 3.39 of the petition, it is stated that the respondent no.1 and her predecessor have taken the actions purely on the basis of the record and whether such letters are

addressed to different authorities are not, only the concerned author of the letters can answer the same."

In this regard, one may notice that in para 3.34 to 3.39 of the petition, the petitioner has specifically narrated the series of letters, Annexures 'BB' to 'GG' to the petition written by respondent Nos.2, 5 & 6, contents of which are noted hereinabove. I find that the stand of respondent No.1 is rather vague. Since most of these letters were addressed to respondent No.1, it was her duty to make a clean breast of the factual aspects and to state clearly whether such letters were written and received by her or deny that such letters were never received by her. She chose a middle path and stated that it is only the concerned author of the letters who can state whether such letters were written or not. As a responsible Government Officer, it was the duty of respondent No.1 to apprise the Court about the correct facts on record. If such letters were written, it was her duty to point out to the Court that they were in fact written. The effect of such letters is for the Court to decide on the available material on record. By not denying, but only attempting to divert attention by stating that only the author of letters can state whether they were actually written or not, respondent No.1 has more than satisfied this Court that such letters were in fact written. As a matter of fact, respondent No.1

has contradicted herself on this important aspect of the matter. In the impugned order, apparently in response to a specific contention raised by the petitioner, respondent No.1 in para 5 of the order records that "*there had been no written or oral recommendation of any Member of Legislative Assembly or Minister in the case*" If respondent No.1 was so specific with respect to the non-existence of such letters on 19.8.2002 when she passed the impugned order, it is difficult to understand how while filing the affidavit her confidence in denying the existence of such letters was reduced considerably when the petitioner produced copies of such letters before the Court. In fact, learned counsel Mr.Munshaw appearing for respondent No.1 canvassed that even if such letters were written, respondent No.1 cannot be blamed for the same as she has decided the matter on its own merits. He contended that respondent No.1 cannot prevent social workers or other interested persons from writing recommendatory letters and her duty is to decide the matter on merits without being influenced by such letters. In principle, there can be no quarrel about such a proposition. Nevertheless, the duty of respondent No.1 was to apprise the Court about the true facts. When specifically averred by the petitioner that such letters were written, which would exert pressure on respondent No.1, instead of stating that she proceeded on the basis of the record, it was her duty to make a

clean breast of the record and to state truthfully before the Court whether such letters were written at all or not. Once again, to revert back, the stand taken by respondent No.1 in the impugned order is in stark contrast with her affidavit in reply where she stated that it is only the concerned author of the letter who can state whether such letters were written or not. In conclusion, I have no doubt in my mind that the petitioner has succeeded in establishing that such letters were written by respondent Nos.2, 5 & 6 as narrated above. My conclusions are based on following salient features:-

(1) Respondent Nos.2, 5 & 6 despite sufficient notice having been given have not appeared and filed affidavit of denial;

(2) Respondent No.1 in the two affidavits filed has not specifically denied having received such letters. Her assertion that whether the such letters were written or not, only the concerned author of the letters can answer only further reinforces my belief of existence of such letters;

(3) In the impugned order dated 19.8.2002, she had specifically stated that there has been no written or oral recommendations of any Member of Legislative Assembly or Minister in the case. This is in contrast to her unwillingness in the affidavit filed by her to deny the existence of such letters. One may notice that she has also been joined as party

respondent No.1 in personal capacity to answer the allegations of malafides.

23. Having thus concluded that the above mentioned letters were in fact written by the then MLA, Minister of State with independent charge of Panchayat Department and M.P., it would be necessary to examine more closely the exact effect of such letters on the present proceedings.

24. In so far as the letters written by respondent No.2 and respondent No.6 are concerned, I find that they are sufficiently damaging in their contents. As noted earlier, respondent No.2 wrote repeated letters to the Taluka Development Officer and to the District Development Officer. He in fact, hinted at some arrangement with DDO as also with the Development Commissioner. He requested the DDO to bring about a particular conclusion in the proceedings initiated against the petitioner. He also referred to some alleged talk with respondent No.1 as well as the Development Commissioner. He also urged the DDO to suspend the petitioner before the elections failing which it would cause damage to him. He assured the DDO that he will manage with the Development Commissioner so as to see that the suspension is not stayed. On 23rd July 2002, he requested the District Development Officer not

to grant any further time to the petitioner since elections are imminent. He wrote to the DDO stating that if more time is given to the petitioner, he will come up with points in his defence. He assured the DDO that no stay will be granted against the order passed by her. Respondent No.6 though somewhat cautious in his statements was no less clear in the intent. He requested the DDO to ensure that the petitioner is disqualified. In another letter dated 28.8.2002, he told the Development Commissioner not to grant stay to the petitioner if appeal is filed against his removal order passed by the DDO. The combined effect of these letters is that there was considerable pressure on respondent No.1 to decide the issues against the petitioner and decide promptly and in a particular manner. It is impossible to envisage a situation where such strong recommendations of persons holding high public offices would have no effect on the mind of the District Development Officer. It is impossible to accept the contention on behalf of respondent No.1 raised by learned counsel Mr.Munshaw that she decided the matter on its merits without being influenced by any outside pressure, more so when respondent No.1 did not come out clean and state before the Court the exact nature of letters or recommendations received by her from these political personalities. In the case of M.Shankaranarayanan, IAS v. State of Karnataka, AIR 1993 SC 763, the Hon'ble Supreme Court observed that it may not

always be possible to demonstrate malice in fact with elaborate particulars and it may be permissible in an appropriate case to draw a reasonable inference of malafide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture. In the present case I find that from established facts, malafides can be safely inferred. I have no hesitation in concluding that the impugned order passed by respondent No.1 is tainted on account of external pressure exerted on her. The exact effect and extent of damage that might have been done in the actual analysis is impossible to gauge. It is neither possible nor proper to judge what would have been the ultimate conclusion had this external pressure not been exerted on respondent No.1.

25. Before examining the effect of my conclusions hereinabove in totality of the facts and circumstances of the case and before deciding what exact order should be passed in the facts of the present case, I would like to note that in so far as respondent No.5 is concerned, his letter does not in any manner offend the conscience of this Court. He only conveyed his feelings about the order which was already passed. At least on record, so far as the letter written by respondent No.5 is concerned, I find nothing objectionable in its contents. I am, therefore, unable to

agree that respondent No.5 was also a person who was a party to exerting pressure on respondent No.1. This, however, does not take away the sting from the argument of the petitioner that respondent No.1 was under considerable external pressure to decide the issue in a particular manner. When a quasi-judicial authority was exercising its statutory functions and powers, it was not proper on the part of persons occupying higher public position to exert personal pressure to ensure that a particular conclusion is reached in the proceedings. By the very nature of things, quasi-judicial authority is empowered and required to decide the issues on its merits on the basis of available material on record. There cannot be, in a democratic society governed by the Constitution, a situation where an outside agency who is not directly involved in the decision making, can in any manner influence the outcome of the issues. To conclude, I find that the following factors in favour of the petitioner:-

1) Respondent No.1 considered the clarification/report sought from the Executive Engineer on 12th August 2002 while passing the impugned order, copies of which were never supplied to the petitioner. In fact, existence of such report was never revealed to him until passing of the final order.

2) Reliance was also placed on the confessional statements made by the Taluka Development Officer and the Deputy Accountant who stated to the effect that they had passed false

bills under pressure from the petitioner. These statements were also neither disclosed nor supplied to the petitioner till passing of the final order or even thereafter.

3) The petitioner's allegations of malafides and exertion of external pressure by respondent Nos.2, 5 & 6 has not been denied by these respondents though they have been joined in their personal capacity in the present proceedings.

4) The letters alleged to have been written by these respondents have also not been disputed by them or even by respondent No.1 who is the recipient of most of these letters. In fact, respondent No.1 at one stage, in her order having noted that there had been no written or oral recommendations of any Member of Legislative Assembly or Minister in the case shied away from specifically denying having received these letters while filing affidavits before this Court.

5) The contents of some of the letters, as I have already noted, are matter of serious concern.

26. On the basis of the above collective conclusions which I have reached, I have no hesitation in holding that the order as it stands cannot be sustained and the same requires to be quashed and set aside. Accordingly, the order dated 19.8.2002 passed by the District Development is quashed and set aside. Consequently, the appellate order also stands

quashed.

27. What then would be the effect of this order is yet to be stated. As noted earlier, in case of breach of principles of natural justice, the proceedings are not terminated and the authorities would be free to commence the proceedings from the stage where the defect has been detected. Had this been a case where I could have with reasonable certainty come to the conclusion that, but for the external pressure, the decision of respondent No.1 would have only been the exoneration of the petitioner, I would have terminated the proceedings here and now. I have discussed at considerable length the nature of evidence on record and my conclusion that it is not possible to state that the conclusions arrived at by respondent No.1 are perverse and supported by no evidence. I, however, hasten to add that this is not to suggest that the conclusions are just and proper since primarily this is the task of the administration or the competent authority under the provisions of the Act to primarily consider the probative value of the evidence on record and come to a definite conclusion. This Court in exercise of powers under Article 226 of the Constitution cannot substitute itself and place itself in the position of the Competent Authority and endeavour to imagine what would have been the position had external pressure not been exerted. This Court is not competent to

undertake this task.

27.1 In the decision of Canara Bank v. Debasis Das AIR 2003 SC 2041, the Hon'ble Supreme Court observed that the position in our country in administrative law is where no fundamental freedoms are involved, the courts/tribunals will only play a secondary role while the preliminary judgment as to reasonableness will remain with the executive or administrative authority.

27.2 In the decision of State of U.P. v. Johri Mal 2004 AIR SCW 3888, the Hon'ble Supreme Court observed as follows:

> "28. The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the Courts step into the areas exclusively reserved by the supreme lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review Court. The limited scope of judicial review succinctly put are:

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.

(ii) A petition for a judicial review would lie only on certain well-defined grounds.

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasions miscarriage of justice.

(v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies."

It was further observed that while exercising the power of judicial review the Court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued that the Court is not competent to exercise its power when there are serious disputed questions of facts. It was further observed that while examining and scrutinizing the

decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the Curt of judicial review can re-appreciate the findings of facts depends on the ground of judicial review.

28. It can thus be seen that while striking down an order on the ground of violation of principles of natural justice and on the ground that the quasi judicial authority having passed the order under external pressure, it is not possible for me to come to a definite conclusion that but for such external pressure, the petitioner would have been exonerated. It is the primary duty of the administration and the competent authority must take an independent decision in this regard.

29. For the above purpose, while quashing the order under challenge, liberty is reserved to the competent authority under the Gujarat Panchayats Act to proceed further with the proceedings. For the above purpose, following directions are given :-

(1) If the competent authority proposes to proceed further against the petitioner, a notice in this regard shall be given to him within a period of two months from the

date of receipt of a copy of this order.

(2) It will be open for the Competent Authority to pass fresh orders in accordance with law after supplying material to the petitioner which is sought to be relied upon and also giving sufficient time and opportunity to the petitioner to produce rebuttal evidence.

(3) Respondent No.1 herein by now would have been shifted out of her position as District Development Officer, Bhavnagar and, in fact, I am informed that she no longer holds the said cadre and she is already promoted. The question of respondent No.1 again deciding the matter, therefore would not arise.

(4) Respondent No.2 and 6 are warned against trying to exert any pressure on the Competent Authority in discharge of its quasi-judicial functions.

With the above directions, the petition is allowed. Rule is made absolute accordingly with cost quantified at Rs.10,000/- (Rupees ten thousand) to be borne by respondent Nos.2 & 6 equally.

Direct service.

(**Akil Kureshi,J**).

(vjn)